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HOUSE BILL 720

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

James Roger Madalena

AN ACT

RELATING TO MINING; AMENDING THE SURFACE MINING ACT PROVISION
FOR COSTS AND FEES OF ADMINISTRATIVE PROCEEDINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 69-25A-29 NMSA 1978 (being Laws 1979,
Chapter 291, Section 29) is amended to read:

"69-25A-29. ADMINISTRATIVE REVIEW. --

A. A permittee issued a notice or order by the
director pursuant to the provisions of Section [~~25 of the~~
~~Surface Mining Act~~] 69-25A-25 NMSA 1978, or any person having
an interest [~~which~~] that is or may be adversely affected by
[~~such~~] the notice or order or by any modification, vacation or
termination of [~~such~~] the notice or order, may apply to the
director for review of the notice or order within thirty days
of receipt thereof or within thirty days of its modification,

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1 vacation or termination. Upon receipt of [~~such~~] the
2 application, the director shall cause [~~such~~] the investigation
3 to be made as he deems appropriate. [~~Such~~] The investigation
4 shall provide an opportunity for a public hearing, at the
5 request of the permittee or the person having an interest which
6 is or may be adversely affected, to enable the permittee or
7 [~~such~~] the person to present information relating to the
8 issuance and continuance of [~~such~~] the notice or order or the
9 modification, vacation or termination thereof. The filing of
10 an application for review under this subsection shall not
11 operate as a stay of any order or notice.

12 B. The permittee and other interested persons shall
13 be given written notice of the time and place of the hearing at
14 least five days prior thereto. Any [~~such~~] hearing shall be of
15 record and adjudicatory in nature in accordance with the
16 commission's regulations.

17 C. Upon receiving the report of [~~such~~] the
18 investigation, the director shall make findings of fact and
19 shall issue a written decision, incorporating therein an order
20 vacating, affirming, modifying or terminating the notice or
21 order or the modification, vacation or termination of [~~such~~]
22 the notice or order complained of and incorporate his findings
23 therein. Where the application for review concerns an order
24 for cessation of surface coal mining and reclamation operations
25 issued pursuant to the provisions of Section [~~25 of the Surface~~

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1 ~~Mining Act]~~ 69-25A-25 NMSA 1978, the director shall issue the
2 written decision within thirty days of the receipt of the
3 application for review, unless temporary relief has been
4 granted by the director pursuant to Subsection D of this
5 section or by the court pursuant to Section ~~[30 of that act]~~
6 69-25A-30 NMSA 1978.

7 D. Pending completion of the investigation and
8 hearing required by this section, the applicant may file with
9 the director a written request that the director grant
10 temporary relief from any notice or order issued under Section
11 ~~[25 of the Surface Mining Act]~~ 69-25A-25 NMSA 1978, together
12 with a detailed statement giving reasons for granting ~~[such]~~
13 the relief. The director shall issue an order or decision
14 granting or denying ~~[such]~~ the relief expeditiously. Provided
15 that where the applicant requests relief from an order for
16 cessation of coal mining and reclamation operations issued
17 pursuant to Section ~~[25 of that act]~~ 69-25A-25 NMSA 1978, the
18 order or decision on ~~[such a]~~ the request shall be issued
19 within five days of its receipt. The director may grant ~~[such]~~
20 the relief, under such conditions as he may prescribe, if:

21 (1) a hearing has been held in the locality of
22 the permit area on the request for temporary relief in which
23 all parties were given an opportunity to be heard;

24 (2) the applicant shows that there is
25 substantial likelihood that the findings of the director will

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1 be favorable to him; and

2 (3) [~~such~~] the relief will not adversely affect
3 the health or safety of the public or cause significant
4 imminent environmental harm to land, air or water resources.

5 E. Following the issuance of an order to show cause
6 as to why a permit should not be suspended or revoked pursuant
7 to Section [~~25 of the Surface Mining Act~~] 69-25A-25 NMSA 1978,
8 the director shall hold a public hearing after giving written
9 notice of the time, place and date thereof. Any [~~such~~] hearing
10 shall be of record and adjudicatory in nature in accordance
11 with the commission's regulations. Within sixty days following
12 the public hearing, the director shall issue and furnish to the
13 permittee and all other parties to the hearing a written
14 decision, and the reasons therefor, concerning suspension or
15 revocation of the permit. If the director revokes the permit,
16 the permittee shall immediately cease surface coal mining
17 operations on the permit area and [~~shall~~] complete reclamation
18 within a period specified by the director, or the director
19 shall declare as forfeited the performance bonds for the
20 operation. Any order issued pursuant to this subsection shall
21 be appealable directly to the commission pursuant to Subsection
22 G of this section without further review by the director.

23 F. Whenever an order is issued under this section or
24 as a result of any administrative proceeding under the Surface
25 Mining Act, at the request of any person a sum equal to the

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1 aggregate amount of all costs and expenses, including attorney
2 fees, as determined by the director or the commission to have
3 been reasonably incurred by ~~[such]~~ the person for or in
4 connection with his participation in ~~[such]~~ the proceedings,
5 including any judicial review of agency actions, may be
6 assessed against either party as the director, the commission
7 or the court deems proper ~~[provided that no such assessment~~
8 ~~shall be imposed upon the director or commission]~~.

9 G. Any person who is aggrieved by a decision of the
10 director may appeal to the commission for relief. In order to
11 perfect ~~[such]~~ the appeal, a notice of appeal must be filed
12 with the commission and the director within thirty days of the
13 director's decision. A hearing limited to the record compiled
14 before the director shall be conducted by the commission in
15 accordance with commission regulations. The commission shall
16 consider and weigh all of the evidence contained in the record
17 and shall make independent findings upon which to base its
18 decision. The commission shall not be bound by findings of the
19 director, notwithstanding ~~[such]~~ that the findings may be
20 supported in the record by substantial evidence. If, before
21 the date set for hearing, application is made to the commission
22 for leave to present additional evidence and it is shown to the
23 satisfaction of the commission that the additional evidence is
24 material and that there was good reason for failure to present
25 it in the initial proceeding, the commission may order that the

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1 additional evidence be taken by the director. The director may
2 modify his findings and decision by reason of the additional
3 evidence and shall file with the commission a transcript of the
4 additional evidence, together with any modified or new findings
5 or decision. "

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